

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

ACCO SYSTEMS, INC.^{1/}

Employer

and

Case 7-RC-22375

**MILLWRIGHTS LOCAL 1102, UNITED BROTHERHOOD
OF CARPENTERS AND JOINERS OF AMERICA**

Petitioner

and

**INTERNATIONAL SERVICES GROUP, LLC, BATTON
TECHNICAL, INC., and PICO RESOURCES, INC.**

Parties in Interest

APPEARANCES:

Michael Asher, Attorney, of Southfield, Michigan, for the Employer and International Services Group, LLC.

Nicholas R. Nahat, Attorney, of Southfield, Michigan, for the Petitioner.

Robert E. Day, Attorney, of Detroit, Michigan, for Batton Technical, Inc.

Stanley C. Moore, III, Attorney, of Bloomfield Hills, Michigan, for Pico Resources, Inc.

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

¹ The Employer's name appears as corrected at the hearing.

Upon the entire record in this proceeding,^{2/} the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. For the following reasons, no question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer engineers, manufactures, and installs customized material-handling systems for the automotive industry. The Petitioner seeks an election among the Employer's production and maintenance employees. The threshold issue is whether the unit may permissibly be limited to those workers employed solely by ACCO, as urged by the Petitioner, or whether the unit must also include workers supplied to ACCO by outside staffing agencies, as urged by the Employer. I find that the community of interest shared by the regular and agency employees is so close that the petitioned-for unit excluding the latter would be inappropriate. Because the Petitioner does not wish to proceed to an election within a unit that includes agency workers, I will dismiss the petition.

For at least two years, ACCO has supplemented its production and maintenance workforce with staffing agency employees from Batton Technical, Inc. ("Batton"), International Services Group, LLC ("ISG"), and Pico Resources, Inc. ("Pico"). The shop currently employs 33 ACCO and 50 agency employees. On the day shift, the shipping/receiving, cutting/fabricating, paint, panel, and assembly departments have roughly equal numbers of ACCO and agency employees. The only exceptions on the day shift are the quality assurance and maintenance departments, which have two workers apiece, all employed by ACCO. The night shift, which employs about 40 percent of the total combined workforce, is comprised almost entirely of agency employees.

Each production and maintenance department has at least one group leader who allocates work, oversees progress, reviews time-cards, and serves as a liaison between the hourly staff and higher management.^{3/} Eight of the group leaders are employed by

² The Employer, Petitioner, Batton Technical, Inc., and Pico Resources, Inc. submitted briefs that were carefully considered.

³ The supervisory status of the group leaders is in dispute and was litigated by the parties at hearing. However, based on my unit determination, this issue has become moot.

ACCO and guide mixed crews of ACCO and agency workers. The night shift is headed by a group leader employed by ACCO, as well as by three supplemental group leaders, two from Batton and one from ISG, whom the Employer promoted from among the night-shift agency workers. The entire operation on both shifts is superintended by ACCO's Manufacturing Manager Mark Lemons.

When ACCO needs additional staff, Lemons contacts an agency and describes the required job skills. The agency pre-screens its pool, using criteria that ACCO has suggested, and sends ACCO the resumes of promising candidates. ACCO's Manufacturing Manager Lemons winnows the list, conducts interviews, administers practical skills tests, and chooses the best applicant. Lemons also establishes the successful candidate's starting wage by valuing the worker's services at a given rate. This becomes the agency employee's compensation, on top of which ACCO pays an administrative fee to the supplying agency.

Agency workers who secure positions at ACCO are issued the same payroll and building access swipe cards as are ACCO workers, work the same hours, and use the same parking lot, cafeteria, break room, and rest rooms. They also complete the same daily job sheets that document how long they worked on particular projects. ACCO's payroll personnel use the payroll swipe cards and job sheets to track hours worked by both ACCO and agency employees. ACCO employees are paid on checks drawn on ACCO's payroll, while agency staff is paid from ACCO's accounts payable fund on checks prepared by the respective agencies. ACCO group leaders distribute the paychecks of ACCO and most agency employees.⁴

ACCO rewards agency employees by granting them wage increases. This is accomplished by ACCO's notifying the agency to adjust the rate ACCO is billed for that worker. ACCO has also promoted agency staff to group leader positions with concomitant raises. Overtime and other assignments are allotted based upon work group and experience, not upon the worker's nominal employer.

ACCO does not hire hourly workers off the street, but only from the ranks of its temporary staff. Currently, ACCO is offering regular employment to four agency employees. They will join ACCO's permanent staff with no carryover seniority. Where skills and performance are deemed equal, agency employees are laid off before ACCO employees.

Agency employees work side-by-side ACCO employees, interpreting the same blueprints on the same projects under the same leaders and supervisors. Lemons resolves grievances and concerns of ACCO and agency staff alike. ACCO does not have a formal written disciplinary procedure, but all hourly workers are subject to the same basic set of

⁴ Some agency employees apparently have their paychecks electronically deposited directly into their personal accounts.

conduct rules. If ACCO is dissatisfied with the performance of an agency employee, it causes his separation by having the supplying agency remove him from the site. There is no evidence that the agencies independently evaluate or discipline the workers that they supply.

No uniforms or distinguishing clothing is required or usually worn. Rather, all hourly personnel observe the same industrial dress code of long pants and shirts with sleeves. ACCO's fringe benefits vary somewhat from those offered by the agencies. Safety meetings are convened without regard to status, although recently meetings were held for ACCO workers alone to discuss fringe benefits and Petitioner's organizing campaign.

Resolution of unit composition issues begins with an examination of the petitioned-for unit. If it is appropriate, the inquiry ends. *Bartlett Collins Co.*, 334 NLRB No. 76, slip op. at 1 (July 11, 2001). In determining the threshold issue of appropriateness, the Board is guided by the principle that it need endorse only an, not the most, appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 419 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir. 1951). Appropriateness normally depends upon community of interest factors such as mutuality of wages, hours, and working conditions; commonality of supervision; similarity in skills and functions; frequency of contact and interchange; and functional integration. *Ore-Ida Foods*, 313 NLRB 1016 (1994). A union's desire is always a relevant, but must not be a dispositive, consideration. *E. H. Koester Bakery & Co.*, 136 NLRB 1006 (1962).

In *M. B. Sturgis*, 331 NLRB 1298 (2000), the Board held that a unit of all of a user employer's workers – both those solely employed by the user and those jointly employed by the user and supplier – constitute an “employer unit” within the meaning of Section 9(b) of the Act. The Board reasoned that in such a combined unit, all of the work is performed for the user employer and all of the employees are employed, either solely or jointly, by the user employer. *Id.* at 1304-1305. If a union wishes to bargain with only a single user employer with respect to that user's statutory employees, there is no need to address the joint-employer issue. *Professional Facilities Management*, 332 NLRB No. 40 (Sept. 26, 2000).

ACCO has control over almost every meaningful aspect of its agency workers' employment. The record establishes, and ACCO in effect concedes, that it is the statutory co-employer of its agency workers. *Outokumpu Copper Franklin*, 334 NLRB No. 39, slip op. at 1, fn. 3 (June 6, 2001). This finding, however, does not by itself settle the central issue in this case, which is whether the agency employees must be included in the Petitioner's sought unit of ACCO's hourly workers. Disposition of this issue requires traditional community of interest factors to be applied. *Sturgis*, *supra* at 1305-1306; *Outokumpu*, *supra*, slip op. at 1.

Two recent cases, in which the identical Board panel reached opposite conclusions on this central question, chart a helpful path. In *Outokumpu*, the Board found that agency employees were required to be included.⁵ The panel relied on evidence that the temporaries worked beside the regular production employees on all shifts, performed the same work functions, and were supervised by the same supervisors. More importantly, the panel noted that nearly all of the temporaries' terms and conditions of employment, including assignments, directions, discipline, and wages, were controlled by the user employer; that the user employer's supervisors evaluated them for future permanent employment; that usage was based on criteria determined by the user employer; and that temporaries were almost exclusively the sole source of the user employer's regular workforce. All of the foregoing indices are present in the case at bar. In addition, ACCO controls the starting and subsequent wages of its agency staff, a factor apparently missing in *Outokumpu* and which makes its reasoning even more compelling.

Petitioner cites *Engineered Storage Products Co.*, 334 NLRB No. 138 (Aug. 10, 2001), in which the Board reached a contrary result. However, *Engineered Storage* is instructive for its distinctions. There, the same Board panel as in *Outokumpu* relied on evidence that the user employer provided no input into the supplier's hiring, firing, and wage decisions; had never directly hired a supplied employee; and had no plans ever to do so. Those features of *Engineered Storage* are absent here, making the case distinguishable. *Holiday Inn City Center*, 332 NLRB No. 128 (Nov. 14, 2000), also cited by Petitioner, is distinguishable for the same reasons, as the Board found. *Outokumpu*, slip op. at 2, fn. 5. In finding *Engineered Storage* and *Holiday Inn* unpersuasive, I underscore that ACCO establishes its own placement criteria and actively selects its own agency workers, determines their starting wages, influences their later compensation, promotes them, and absorbs them into its permanent workforce. ACCO's agency complement is so integrated with its own staff that no meaningful differences are apparent on the shop floor. Indeed, Lemons testified that ACCO could not function without its agency workers. On these bases, the instant case parallels the factual pattern in *Outokumpu* and warrants the same result.

Petitioner observes that agency employees at ACCO are ineligible for certain ACCO benefits and seniority, and have a different attendance policy. The Board in *Outokumpu* ruled that neither those dissimilarities, nor the temporaries' lower wages, outweighed the many common terms and conditions shared by the regular and temporary employees. The same conclusion must be drawn here.

I find that the employees supplied by Batton, ISG, and Pico share such a strong community of interest with the other employees in the sought unit that their inclusion is mandated. Petitioner stated that it does not wish to proceed under these circumstances.

⁵ Petitioner erroneously cited *Outokumpu* for the opposite proposition.

This moots the other issues litigated at the hearing. Accordingly, no question concerning representation has been raised, and the petition is dismissed.

ORDER

IT IS HEREBY ORDERED that the petition be, and hereby is, dismissed.⁶

Dated at Detroit, Michigan, this 26th day of December 2002.

(SEAL)

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
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Classifications

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⁶ Under the provisions of the Board's Rules and Regulations, a request for review of the Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by January 9, 2003.